

**Vortex Electrical Systems, Inc. and International  
Brotherhood of Electrical Workers, Local Union  
479 a/w International Brotherhood of Electrical  
Workers, AFL-CIO**

**Vortex Electrical Systems, Inc. and Homer Durand.  
Cases 16-CA-22990 and 16-CA-23099**

October 29, 2004

**DECISION AND ORDER**

CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon charges filed by the Union in Case 16-CA-22990 on August 11, 2003, and Homer Durand in Case 16-CA-23099 on September 25, 2003, the General Counsel issued the original consolidated complaint on October 31, 2003, against Vortex Electrical Systems, Inc., the Respondent, alleging that it had violated Section 8(a)(1) and (3) of the Act.

Thereafter, the Respondent and the Charging Parties entered into an informal settlement agreement, which was approved by the Regional Director on December 9, 2003. The settlement agreement required the Respondent to, among other things: (1) post a notice to employees regarding the complaint allegations; (2) compensate Michael Sowell with backpay totaling \$1536; (3) remove from its files and records any references to Sowell's discharge; and (4) advise Sowell in writing that this action had been taken and that the discharge will not be used against him in any way.

The settlement agreement also provided that

Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.

On July 30, 2004, the Regional Director issued an order revoking approval of settlement agreement, order consolidating cases, consolidated complaint and notice of hearing (the order) on the ground that the Respondent had failed to comply with all of the terms of the settlement agreement. Specifically, the order alleged that the Respondent had failed to post a notice, and had failed to fully compensate Sowell pursuant to the backpay provision of the settlement agreement.

The Order provided that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent was required to file an answer to the new consolidated complaint within 14 days from service of it. The Respondent failed to file an answer to the new con-

solidated complaint. On August 25, 2004, counsel for the General Counsel, by telephone, advised the Respondent that unless it filed an answer, a motion for default judgment would be filed. Further, by letter dated August 30, 2004, the Regional Director notified the Respondent that unless it filed an answer by September 7, 2004, a motion for default judgment would be filed. The Respondent has not filed an answer to the July 30, 2004 new consolidated complaint.

On September 16, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 17, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the new consolidated complaint affirmatively stated that unless an answer was filed by August 13, 2004, all the allegations in the consolidated complaint could be considered admitted. Further, as set forth above, the undisputed allegations in the General Counsel's motion disclose that the Region, by telephone on August 25, 2004, and by letter dated August 30, 2004, advised the Respondent that unless it filed an answer, a motion for default judgment would be filed. As stated above, however, the Respondent has failed to file an answer to the new consolidated complaint.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Texas corporation with an office and place of business in Dickinson, Texas, has been engaged in business as an electrical contractor.

During the 12 months preceding issuance of the July 30, 2004 complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for Walgreen Co., an entity directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7)

of the Act, and that International Brotherhood of Electrical Workers, Local Union 479 a/w International Brotherhood of Electrical Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and or agents of the Respondent within the meaning of Section 2(13) of the Act:

Sitman Wainright, Jr.	President
Larry Hogue	Journeyman Foreman

In about July 2003, the exact date unknown, the Respondent, by Larry Hogue, at the Walgreen's Lumberton, Texas jobsite, interrogated an employee about his union membership, activities, and sympathies.

On about July 14, 2003, the Respondent's employee, Michael Sowell, concertedly complained to the Respondent regarding wages, hours, and working conditions of the Respondent's employees by demanding a morning and afternoon break.

On about July 16, 2003, the Respondent discharged Sowell.

The Respondent discharged Sowell because Sowell concertedly demanded a morning and afternoon break, and because he formed, joined, or assisted the Union, and engaged in other concerted activities, and to discourage employees from engaging in these activities.

## CONCLUSION OF LAW

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by discharging Michael Sowell, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (3) by discharging Michael Sowell, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially

equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>1</sup> The Respondent shall also be required to remove from its files all references to the unlawful discharge of Michael Sowell, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

## ORDER

The National Labor Relations Board orders that the Respondent, Vortex Electrical Systems, Inc., Dickinson, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership, activities, and sympathies.

(b) Discharging employees because of their union or protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Sowell full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Michael Sowell whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Michael Sowell, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic

<sup>1</sup> It appears that the Respondent has already paid Sowell a portion of the backpay due under the settlement agreement. This shall be taken into account in the compliance stage of this proceeding.

form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Dickinson, Texas, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 14, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union membership, activities, and sympathies.

WE WILL NOT discharge employees because of their union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section of the act.

WE WILL, within 14 days from the date of the Board's Order, offer Michael Sowell full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Michael Sowell whole for any loss of earnings and other benefits resulting from his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Michael Sowell, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

VORTEX ELECTRICAL SYSTEMS, INC.